

No. 13772

IN THE

**United States Court of Appeals**  
FOR THE NINTH CIRCUIT

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C. N. PAPADAKIS,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

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No. 22230 CD.

Upon Appeal From the District Court of the United States  
for the Southern District of California, Central  
Division.

Hon. David W. Ling, District Judge.

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**OPENING BRIEF OF APPELLANT.**

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FILED

MAY 24 1968

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### Statement of Basis of Jurisdiction.

This is an appeal from a judgment by the District Court of the United States for the Southern District of California, Central Division, after a trial with a jury, finding the appellant and his father, Nick Papadakis, guilty of evading income taxes for the years 1945, 1947, 1948, 1949 and 1950 (U. S. C., Title 26, Sec. 145(b)), by filing and causing to be filed with the Collector of Internal Revenue for the Sixth Internal Revenue Collection District fraudulent income tax returns and evading the payment of tax thereon. The appellant's father was fined

\$8,000.00, and the appellant, C. N. Papadakis, was sentenced to ten months' imprisonment and to pay a fine in the sum of \$200.00 on each of the Counts, One to Sixteen, inclusive, of the indictment, the periods of imprisonment to begin and run concurrently [Clk. Tr. pp. 88, 89, 90].

Following the sentence the appellant, C. N. Papadakis, duly filed a notice of appeal within the time prescribed by law [Clk. Tr. p. 92], and appellant was continued upon bail by the trial judge, pursuant to Rule 46(a)(2) of the Federal Rules of Criminal Procedure, pending the appeal. The District Court had jurisdiction under Title 18, Sec. 3231, and this Court has jurisdiction under Title 28, Sec. 1291; and under Rules 37, 38 and 39 of the Federal Rules of criminal procedure for the District Courts.

### **Statement of the Case.**

#### **The Nature of Appellant's Business.**

The appellant's father, Nick Papadakis, was born in Greece. He came to the United States in 1902 and settled in Los Angeles County in 1903. He moved to San Pedro, California, in 1910, where he has lived ever since with his wife and family.

The appellant, C. N. Papadakis, who is commonly known as "Gus," and to whom we refer, with the Court's indulgence, hereafter as Gus, was one of several children [Rep. Tr. pp. 802, 804, 805]. The father, Nick Papadakis, was continually engaged in business, having started as a peanut vender in the Temple block in Los Angeles. In 1910 he opened a restaurant in San Pedro, and from 1910 on he has been continually engaged in operating restaurants, hotels, and liquor stores. He, also, acquired many pieces of property over that period of years.

The appellant, C. N. Papadakis, has acquired a college education, and while doing so, helped his father in and about the hotel and the liquor stores.

**The Records of the Appellant's Business.**

Over a period of years, the appellant's father Nick Papadakis, had kept various records of his business, including a simple book kept at the hotel. Most of their business passed through the banks, as evidenced by voluminous packages of checks, deposit slips and bank records, as evidenced by the Government's Exhibit 94.

At the liquor stores, records were kept of sales and disbursements. Largely, the business was conducted by making the deposits in the bank under the name of Anchor Liquors, and the bills were paid by check, with the exception of small amounts which were paid out in cash.

Over a period of years the father and the appellant had consulted with an accountant by the name of Hoffman in San Pedro, who aided in the keeping of the records of various enterprises operated by the father and his family.

**The Indictment.**

The indictment was in sixteen Counts:

Count One charged Nick Papadakis and C. N. Papadakis, the appellant, with evading a large part of the income tax due the United States of America by the defendant, Nick Papadakis, for the year 1945; further charging the filing of a false and fraudulent income tax return for that year. Computed on the community property basis his net income was alleged to be \$16,580.33, whereas it was \$43,495.15;

Count Two charged Nick Papadakis and C. N. Papadakis, the appellant, with attempting to evade income tax due for the year 1945 by filing a false return on behalf of Katina Papadakis, the wife of Nick and the mother of the appellant, Gus, alleging that on community property basis her net income was \$16,580.33, when it was actually \$43,495.15;

Count Three charged Nick Papadakis and C. N. Papadakis, the appellant, with evading income tax for the year 1947 on behalf of Nick by filing a false return, setting up net income on a community property basis as \$4,817.44, whereas it was \$25,024.59;

Count Four charged Nick Papadakis and C. N. Papadakis, the appellant, with filing a false return for the year 1947 on a community property basis for Katina Papadakis, the wife of Nick and the mother of appellant, Gus, alleging the same figures as in Count Three on a community property basis;

Count Five charged Nick Papadakis and C. N. Papadakis, the appellant, with filing a false return for Nick for the year 1948, alleging that on a community property basis the net income was \$6,429.06, whereas it was \$31,574.53;

Count Six charged Nick Papadakis and C. N. Papadakis, the appellant, with filing a false return for Katina Papadakis for the year 1948, alleging the same figures as in Count Five on a community property basis;

Count Seven charged Nick Papadakis and C. N. Papadakis, the appellant, with filing a false return for Nick Papadakis for the year 1949, alleging that on a community property basis the net income was \$9,586.53, whereas it should have been \$12,539.00;

Count Eight charged Nick Papadakis and C. N. Papadakis, the appellant, with filing a false return for the year 1949 for Katina Papadakis, the wife of Nick and the mother of the appellant, Gus, the figures being the same as set forth in Count Seven, it being on a community property basis;

Count Nine charged C. N. Papadakis, the appellant, alone, with filing a false return for the year 1946, alleging that on a community property basis the net income was \$4,038.95, when it was actually \$5,910.27;

Count Ten charged C. N. Papadakis, the appellant, alone, with filing a false return for 1946 on behalf of his wife, Helene Papadakis, the figures being the same as in Count Nine, it being a community property basis;

Count Eleven charged C. N. Papadakis, the appellant, alone, with filing a false return for the year 1947, alleging that on a community property basis the net income was \$2,921.69, whereas the net income was alleged to be \$7,330.84;

Count Twelve charged C. N. Papadakis, the appellant, alone, with filing a false return for the year 1947 on behalf of his wife, Helene Papadakis, the figures being the same as in Count Eleven, it being on a community property basis;

Count Thirteen charged C. N. Papadakis, the appellant, alone, with filing a false return for the year 1948, alleging a net income in the sum of \$4,584.85 whereas on a community property basis it was \$9,092.30;

Count Fourteen charged C. N. Papadakis, the appellant, alone, with filing a false return on behalf of his wife, Helene Papadakis, for the year 1948, the figures being

the same as alleged in Count Thirteen, it being on a community property basis;

Count Fifteen charged C. N. Papadakis, the appellant, alone, with filing a false return for the year 1949, alleging a net income in the sum of \$6,506.40, whereas on a community property basis it was \$8,795.64; and

Count Sixteen charged C. N. Papadakis, the appellant, alone, with filing a false return on behalf of his wife, Helene Papadakis, for the year 1949, the figures being the same as alleged in Count Fifteen, it being on a community property basis [Clk. Tr. pp. 2 to 15, incl.].

A motion to dismiss the indictment was filed and made, as was a motion for a bill of particulars [Clk. Tr. pp. 16 to 27].

The motion to dismiss was denied.

The motion for a bill of particulars was granted.

The bill of particulars is found at pages 28 to 34, inclusive, of the Clerk's Transcript, and afforded the defendant and appellant practically no information.

Thereafter, a motion for a supplemental bill of particulars was made on behalf of C. N. Papadakis. Upon hearing a motion for the supplemental bill of particulars it was denied [Clk. Tr. pp. 36 to 43].

#### **The Judgment.**

The defendants were found guilty: Nick Papadakis on Counts 1 to 8, inclusive, with which he had been charged, and Constantine N. Papadakis, or Gus Papadakis, on Counts 1 to 16, inclusive, on which he had been charged.

Motions for acquittal were made.

A motion for a new trial as to defendant, C. N. Papadakis, was made.

Both motions were denied.

Nick Papadakis was fined \$1,000.00 on each of Counts 1 to 8, inclusive, and Constantine N. Papadakis, or Gus Papadakis, was sentenced to 10 months' imprisonment, and a fine of \$200.00 on each of Counts 1 to 16, inclusive, the periods of imprisonment to begin and run concurrently [Clk. Tr. pp. 86 to 91, incl.].

### **The Evidence.**

Evidence was offered by the Government with reference to numerous real estate transactions over a long period of years by Nick Papadakis. These showed the purchases of many pieces of real estate in and about San Pedro and, in many instances, the terms of various escrows [Rep. Tr. p. 87]. This was largely done by stipulation and included testimony with reference to bank balances over a period of years maintained by Nick Papadakis and, also, testimony relating to purchases of United States War Bonds and United States Treasury Notes on behalf of Nick Papadakis; also testimony with reference to loans by the Security-First National Bank to Nick Papadakis; also testimony with reference to signature cards of Nick Papadakis, C. N. Papadakis and other members of the Papadakis family who had access to the bank accounts maintained in San Pedro [Rep. Tr. pp. 87 to 127].

This testimony was received only as to Nick Papadakis [Rep. Tr. p. 95].

Martha O'Sullivan, a certified public accountant, employed by the defendants, identified amended returns and a net worth statement on behalf of Nick and Katina

Papadakis, which she had prepared [Rep. Tr. pp. 45, 46], stating that she had used bank statements, cancelled checks, rent record books, records of returns of the stores, information taken from leases, a day book that showed records of some expenses, and a month to month record book showing the rent account of the LaSalle Hotel. From these she prepared a document known as Government's Exhibit 34 [Rep. Tr. pp. 45 to 48]. A copy of this Exhibit is attached hereto in the appendix. This document had been forwarded to the Treasury Department in San Francisco by the accountant about September 7, 1951.

Martha O'Sullivan testified that she had prepared a group of "tentative amended returns" on behalf of Nick and his wife Katina Papadakis. These were prepared from bank statements, cancelled checks, the hotel books, month to month rent books and computation of rentals due on leases, covering the years 1942 to 1949, inclusive, for Nick and Katina Papadakis. They were marked as Government's Exhibit 35 [Rep. Tr. pp. 52 to 54].

Harold Wilbur testified that he was a revenue agent assigned to this investigation, that about June, 1949, he met Nick and C. N. Papadakis at the store in San Pedro, and explained that he desired to examine their books, that they were about to make an investigation. He asked for the books and records and C. N. Papadakis produced two books for a store at 1227 Pacific, San Pedro, and he then inquired of Gus as to the whereabouts of other books, and Gus then called the other stores and the books were immediately delivered [Rep. Tr. pp. 218 to 220]. That he wanted to know whether the books indicated whether the expenditures and receipts were by check or cash, and Gus indicated how they had determined that; that for

some days thereafter he continued examining the books and footing the pages in the books. A summarization of the books continued over a period of days; that after he prepared the totals of merchandise purchases for some years there appeared to be a substantial difference in the years 1946, 1947 and 1948 between merchandise purchases and the amounts claimed on income tax returns for those years. That in a conversation with Gus Papadakis, Gus indicated there were boxes of invoices and records in storage [Rep. Tr. pp. 227, 228].

Harold Wilbur testified that from time to time he had conversations with Gus Papadakis and upon occasions they discussed the procedure of handling income tax matters before the Department, such as conferences, etc.; that he informed Gus Papadakis that it appeared to him there was a substantial discrepancy and he wanted to get an explanation if he could [Rep. Tr. pp. 233 to 235].

That on one occasion in the Pacific Street store, Gus was clerking in the front part of the store, and he requested Gus to come to the back part of the store, which he did. They were leaning against some cases of liquor and Gus was on one side and he on the other side; that he then stated to Gus that he did not think he was getting full cooperation in the matter and he wanted to know if there was some explanation; that Gus Papadakis then took a red pencil out of his pocket and on a small piece of paper wrote the figures \$1,000.00, and asked the witness if he would be interested, to which he replied that he was not trying to preach to Gus, or anything like that, but that he would be a fool to stick his neck out for something like that; that Papadakis then struck out the \$1,000.00 and wrote \$1,500.00; that he then laughed at Gus; that

this was all in a friendly spirit; that he was not mad at Mr. Papadakis and Mr. Papadakis was not mad at him; that he stated to Gus that he simply could not take the \$1,500.00 as he was scrutinized by other agencies and it would be impossible for him to do anything like that; that his boss in Los Angeles was fully cognizant of all the to-date results of the examination and he could not cover up anything [Rep. Tr. pp. 237, 238]. He said he then told Papadakis he better destroy the slip of paper, which he did.

The witness stated that he then switched his auditing work from the Anchor Liquor Store to the LaSalle Hotel [Rep. Tr. pp. 244, 245].

That he next saw Nick Papadakis with his attorney, Murray Chotiner, and they went to the safety deposit box of Nick Papadakis at the Security Bank in San Pedro and inventoried the items which consisted of \$54,500.00 in United States Treasury notes; that in a conversation with Nick Papadakis as to the source of the bonds, he stated that he had acquired them in 1946 at the Security Bank in San Pedro; that he had cashed about \$31,000.00 in War Bonds to buy the treasury notes; that he had bought the War Bonds between 1941 and 1946.

That upon completing the inventory they returned to the Pacific Street store where they had a further discussion about the history of the liquor stores and at that time Nick Papadakis told him that during March or April of 1946 they took an inventory of the stores and it was about \$25,000.00; that the stores were then sold to his two sons, Gus and George Papadakis, and that they were to pay him for the inventory; that they had paid

him \$21,000.00 and that after the boys paid him he had kept the cash at home [Rep. Tr. pp. 246 to 249].

That in December of 1949, a conference was held at the residence of Nick Papadakis; that Murray Chotiner, his attorney, Gus Papadakis and Agent Vitello were present; that they were at that time having a discussion for the purpose of obtaining figures to prepare a tentative net worth statement; that Nick Papadakis was attempting to assist them; that Mr. Papadakis was asked how much cash he had on hand, and he stated that he had been a bootlegger during prohibition days and had accumulated a lot of money. He stated that when Roosevelt was first inaugurated he had about \$300,000.00, about one-half of which was in cash and the rest in real estate [Rep. Tr. pp. 249 to 251].

The witness testified that he had prepared a "balance sheet" which represented a statement of the net worth of Nick Papadakis for various years commencing with December, 1941, and running through December, 1948. The document was identified as Plaintiff's 73 [Rep. Tr. p. 257].

The witness testified that he had prepared a work sheet or a summary as a result of his investigation into the bank deposits of Nick Papadakis. This was received as the Government's Exhibit 74, a copy of which is attached hereto in the appendix [Rep. Tr. p. 262].

The witness testified and an analysis of this statement showed large currency deposits over a period of years in the bank account of Nick Papadakis.

The witness testified that in March of 1950, in the law office of Murray Chotiner there was a conference at which Nick Papadakis, Gus Papadakis, Murray Chotiner and Agent Vitello and himself were present; that they dis-

cussed a net worth statement which had been summarized and typed and was ready for signature. The document was identified as Exhibit 75, a copy of which is attached hereto in the appendix [Rep. Tr. p. 267]. The items were pointed out to Nick Papadakis and he stated that the items appeared to be correct [Rep. Tr. p. 268]. The document was then signed by Nick Papadakis.

The agent testified that on March 22, 1950, he and Agent Vitello had visited Gus Papadakis at his residence in San Pedro, where he met his wife Helene. They asked Gus where he obtained the money for the purchase of his home, and Gus stated that his father had given him \$5,400.00; that they then had a discussion as to the inventory at the Anchor Liquor Stores at the time he took over, and he stated that it was between \$24,000.00 and \$30,000.00. [Rep. Tr. pp. 273, 274.]

There was next testimony offered with reference to a conversation between Nick Papadakis and Ernest Papadakis, another son, at the LaSalle Hotel in San Pedro, at which time the agent showed them a rent schedule, Exhibits 77-A and B. [Rep. Tr. pp. 274, 275.] These were prepared from a rental income book kept by Ernest Papadakis and which had been given to the agent by Ernest Papadakis for examination. They went over each item of property and he informed them that it appeared some items were not in the book, and Nick replied that he did not understand why no rent had been shown because it had been collected. [Rep. Tr. pp. 276, 277.] In a conversation with Nick and Ernest Papadakis, Nick stated to the agent that in the latter years the rental book had been kept by Ernest Papadakis. [Rep. Tr. p. 288.] That occasionally he made a few entries himself and sometimes his daughter would make an entry; that

with regard to hotel receipts as distinguished from rental properties, daily summaries were made by persons working in the hotel. [Rep. Tr. p. 289.]

There was then a conversation related between the agent and Mr. Nick Papadakis in which the agent stated that he informed Mr. Papadakis there seemed to him to be a difference in the rental book which had at first been given to him and one which had subsequently been given to him by Ernest Papadakis, and he, the agent, wanted to know why this difference. During the course of this conversation Nick Papadakis replied "I do not understand." The agent stated that he found items which had previously not appeared. [Rep. Tr. pp. 291-297.]

On cross-examination Agent Wilbur testified that he had met Gus Papadakis at the 1227 Pacific Street Store, San Pedro, and, after informing Mr. Papadakis who he was, the books were turned over to him concerning the liquor business by Mr. Gus Papadakis, and he informed Gus Papadakis that he wanted all the books and Gus explained that each store had two books. That Gus immediately sent for the books and had them delivered to the agent that day. [Rep. Tr. pp. 314, 315.]

That throughout the investigation Gus Papadakis co-operated with him; they went to the liquor stores, they examined the cash registers, and they discussed the manner of keeping the books and how the receipts and disbursements were handled. That Gus Papadakis stated he made it a practice to go around to each of the stores on Monday morning and gather up the cash on hand at the stores, make a reconciliation of the receipts of the day and tally the receipts with slips that had been maintained by the clerks at the stores; that a short summary for that particular store was made and this

summary was given to the clerks in the store to enter into the books; that Gus then took the receipts to the bank and made deposits. [Rep. Tr. pp. 322, 323.]

That with reference to purchases, Gus Papadakis informed the agent that the 1227 Pacific Street store functioned as a central purchasing department and as a warehouse and that purchases for the various commodities, beer, wine, liquor, etc., were paid for by check and these entries in recent years had been entered in the books at the Pacific Street store. [Rep. Tr. pp. 326, 327]. That in the store where the agent was working where the records were kept he asked for invoices and there were "literally hundreds of invoices there showing the purchases of liquor, beer, wine and various articles sold in the stores." [Rep. Tr. pp. 328, 329.]

That Gus Papadakis stated that most purchases were paid for by check. That generally speaking if the purchase was less than \$50.00 it might be paid for in cash at the particular store. [Rep. Tr. pp. 329, 330.]

That in his discussions with Gus Papadakis, Gus had told him that he had been in the service for some time but returned in 1946 and went back into business. [Rep. Tr. pp. 331, 332.] That Gus "appeared to be very cooperative." He gathered up bank statements, and cancelled checks running into bundles which were given by Gus to the agent for examination and audit. [Rep. Tr. pp. 332, 333 and 334.] That he was given a large package of deposit slips which he examined. [Rep. Tr. pp. 336, 337, 338], and that he "did not recall with regard to Anchor Liquor any irregularity in the deposits." [Rep. Tr. p. 338.] That he only saw Gus at the Hotel two or three times. That he made spot checks with reference to invoices and with checks to see if they corresponded

and he found that they did. That he made some check of the inventory.

Leonard Mattis testified that he was employed by an accountant, Paul Hoffman, in 1948, at which time Mr. Hoffman was in poor health, but was maintaining an office in San Pedro. That Mr. Hoffman was a public accountant. That he met Gus Papadakis in 1948 and was present at a conversation in Mr. Hoffman's office, when Mr. Hoffman stated that they had been cutting the gross and changing the inventory from year to year, but had been getting away with it for years. Mr. Mattis then asked Mr. Hoffman if it was not risky, and Hoffman stated that they had been getting away with it for years. [Rep. Tr. pp. 130, 132.] That at that time he was preparing returns for 1947 and had the work papers in front of him. That he had some work sheets. [Govt. Exs. 68 and 68-A.]

That at that time the Papadakis family was remodeling the hotel, and in March of 1948, Mattis had a conversation with Gus in which Gus said that he had spent \$21,000.00 or \$22,000.00 in remodeling the hotel. That Mattis stated he thought most of it should be capitalized but Gus said, "No, we will put it down as repairs and improvements." [Rep. Tr. pp. 134, 136.]

Mattis stated that he made out the returns for 1947 for C. N. Papadakis. [Rep. Tr. p. 139.] That Government's Exhibit 29 was prepared by him on behalf of C. N. Papadakis and the LaSalle Hotel. [Rep. Tr. p. 142.]

Mattis stated that on Exhibit 29 the amount of receipts shown was \$66,958.17, but the original figure given to him by Gus Papadakis was \$74,958.17, and the only ex-

planation given was to decrease the tax liability. [Rep. Tr. pp. 143, 144.]

Mattis stated that he had work papers for the year 1948, and that he had a discussion with Gus Papadakis with reference to the making up of the 1948 return. That Gus brought him in some work sheets and he prepared a tentative return [Govt. Ex. 69], for the LaSalle Hotel [Govt. Ex. 69-A], which showed gross income to be \$82,615.82 and net income \$27,646.23. That he then showed it to Gus and Gus stated, "It is too damned high, we will have to cut it down." [Rep. Tr. pp. 145, 147.] That Gus then said, "We will have to cut the gross" and Mattis then cut it approximately \$10,000.00. [Rep. Tr. pp. 147, 148.]

That Mattis prepared Government's Exhibit 30 which relates to the LaSalle Hotel, and the difference between the tentative return that he had prepared and Exhibit 30, as to gross income, was \$10,000.00. [Rep. Tr. pp. 148, 149.] That the return was signed by Nick Papadakis. That he prepared the final return for Anchor Liquor Stores for the year 1948. [Govt. Ex. 27.]

That in March of 1948, Mattis had a conversation with Gus in which Gus stated that he thought the tax liability for the hotel was too high, and he said to try cutting it \$10,000.00, and Mattis did. [Rep. Tr. pp. 159, 160.] That this left the results \$17,000.00 instead of \$27,000.00. Mattis, however, identified Government's Exhibit 30, which shows that Mattis used the \$27,000.00 figure and not the \$17,000.00 figure. [Rep. Tr. pp. 160, 161.]

That Mattis had a conversation with Gus in March of 1949 in which Gus said the purchases could be raised, and Mattis identified Government's Exhibit 71 as a tenta-

tive return which showed one-half the partnership interest as \$15,350.65. That the tentative return was marked Government's Exhibit 71-A. That Gus suggested that he would either have to raise the purchases or juggle the inventory. That Mattis then raised office supplies, refunds, truck repairs, advertising, window cleaning, burglar alarm and purchases so as to make up a total of \$15,000.00. [Rep. Tr. pp. 163, 164.] That the tentative return showed approximately \$30,500.00 net profit, but the final return showed \$18,339.00. [Rep. Tr. pp. 164, 165.]

That Mattis identified a work sheet given to him by Gus Papadakis in 1949. [Govt. Ex. 72.] That at that time Gus told him to make out a tentative return and he prepared a tentative return. [Govt. Ex. 72.]

That in preparing the return the inventory figured \$55,517.95, but Mattis used the figure \$50,517.95 as shown by Government's Exhibit 28. [Rep. Tr. pp. 173, 174.]

Mattis stated that in the summer or spring, after the filing period in 1949, he had a discussion with Gus in which Gus told him an agent was checking over the books pretty thoroughly, and that Gus asked Mattis what he thought of giving the agent a little reward; that Gus said "I will just put down \$1,000.00 on a piece of paper and show it to him and tell him to take it easy." Mattis stated to Gus that this might be a trap; that it might be just what the Government is waiting for. [Rep. Tr. pp. 178, 179.]

On cross-examination, the witness Mattis, when asked if he knew he was committing a felony in making these alterations in figures while preparing the returns, replied,

“I did not at the time, or maybe I knew it at the time, and maybe I did not” [Rep. Tr. p. 185].

The witness Mattis stated that he knew that the Revenue Code relating to persons who aid in the preparation of returns made it a felony to aid in the preparation of a false return, and that notwithstanding that he went ahead and prepared these returns, some of which he even filed. [Rep. Tr. pp. 185, 186.]

The witness Mattis identified Government’s Exhibit 68-A as a work sheet in his handwriting in its entirety. [Rep. Tr. p. 187.]

The witness Mattis identified Government’s Exhibit 68-B as being entirely in his handwriting; also, Government’s Exhibit 68-C. [Rep. Tr. pp. 189, 190 and 191.] The witness Mattis also identified Government’s Exhibit 68-D as being entirely in his handwriting; that all of these work sheets that he used were in his handwriting and were used by him in connection with the preparation of Anchor Liquor partnership and the LaSalle Hotel returns for the year 1948. [Rep. Tr. p. 195.]

The witness Mattis testified that Government’s Exhibit 69 was all in his handwriting; that this entire file to which his attention was directed, Government’s Exhibits 69 and 69-A, had been in his possession until 1949 when he gave it to Internal Aevenue Agent Charles Vitello, who was working on this case. [Rep. Tr. p. 200.] That this was also true of Government’s Exhibit 68. [Rep. Tr. p. 201.] That he also gave Government’s Exhibit 71 to Mr. Vitello; that he gave Government’s Exhibit 71 to Mr. Vitello in 1949, in the Federal Building in Los Angeles. That he gave Government’s Exhibit 72-B, which he stated was all in his handwriting and prepared by

him, to Mr. Vitello in 1950. That he first met Mr. Vitello in 1949 in the San Pedro office of the Bureau of Internal Revenue. [Rep. Tr. pp. 208, 209.]

The witness Mattis testified that he had previously written a letter to the Department of Internal Revenue about the Papadakis affairs, which letter he wrote in September or October of 1948; that in October of 1949 he was aware that as an informer he might recover up to ten per cent of any money recovered by the Government. [Rep. Tr. p. 210.] The witness Mattis testified that he knew this recovery rule was in existence when he wrote the letter to the Department of Internal Revenue, and that he continued to prepare returns for the Papadakis family as late as the year 1952. [Rep. Tr. p. 211.] The testimony is quoted verbatim as follows:

“By Mr. Parsons: You knew that rule was in existence when you wrote that letter, didn’t you?

A. Yes.

Q. And as late as this year, 1952, you prepared the returns for these people, didn’t you? A. Yes, sir.

Q. And at all times during that time, up to 1952, you were in touch with Government agents and were discussing with them the business of these people as discussed with you, isn’t that right? A. Yes.”

The witness Mattis stated that in his discussions with Gus concerning the LaSalle Hotel, they discussed expenditures in connection with the painting and repairing of toilets, bathrooms, the lobby and things of that sort, and they discussed what might be allowable as maintenance items and what should be properly set up

and capitalized, and that he, as an accountant, recognized that these items and matters were subject to numerous conclusions. [Rep. Tr. pp. 213, 214, 215.]

Charles Vitello testified that he was a special agent for the Bureau of Internal Revenue, and that he was assigned to the investigation in this case; that he had discussions with Nick Papadakis as to his assets, and that he told Nick that from his assets it appeared that he had access to funds which were not accounted for by his tax returns for 1942 to 1949. That in a discussion at which Mr. Murray Chotiner was present, it was stated that Mr. Papadakis had about \$300,000.00 in 1933. [Rep. Tr. pp. 454-456.]

The witness Charles Vitello related his investigation, stating that he had numerous discussions with Nick Papadakis, some with C. N. Papadakis and some with other members of the family, and that after the investigation he prepared Government's Exhibit 75; that he also prepared Government's Exhibit 76.

The witness Charles Vitello testified that based on the testimony in this case, and the exhibits he had prepared, Government's Exhibit 8, showed a computation of the unreported income for Nick and Katina Papadakis for the years 1945 to 1949, inclusive; that he had prepared, based upon the evidence and testimony in the case, a net worth statement of Nick and Katina Papadakis for the years commencing December 31, 1944, to December 31, 1949, inclusive. [Govt. Ex. 89.] This exhibit was explained by the witness. [Rep. Tr. pp. 505 to 514, incl.]. The witness then explained Government's Exhibit 89. [Rep. Tr. pp. 514 to 518, incl].

Gus Papadakis testified in his own behalf that he had never entered into any arrangement with his father to prepare any false returns and that he had kept the books at the liquor stores and only for a short time had aided his father in keeping records at the hotel, and to the best of his ability, he had kept his records fairly and accurately. Gus denied ever having had any discussions with Mattis wherein he had asked that the inventory be raised or lowered, or purchases be raised or lowered, or that he had done anything to attempt to defeat income taxes except what he felt he legitimately might do, with reference to expenditures by way of maintenance, various expenses, etc. [Rep. Tr. pp. 620-622.]

Martha O'Sullivan testified that she was a certified public accountant attached to the firm of Gabrielson, O'Sullivan, Poulson & Co., and that she had made a study of the assets, accounts and records of Nick and Katina Papadakis, and had prepared tentative returns and various documents which, in the interest of brevity, are not referred to here, because we have referred to her testimony extensively and identified her exhibits in a discussion of the sufficiency of the evidence, and we respectfully direct the court's attention to the summary of her testimony. Considerable other testimony was offered by members of the Papadakis family, all generally to the effect that they denied making any false entries or in any way attempting to defraud the Government, and then there was substantial evidence offered by numerous business men, judges, etc., as to the good character of Nick Papadakis.

## Specifications of Error.

### I.

It was error to permit the evidence against Nick Papadakis on the net worth and expenditure method and other matters to be used against C. N. or Gus Papadakis. It was hearsay as to him.

### II.

The evidence was insufficient against the appellant C. N. (Gus) Papadakis.

### III.

The Court erred in failing to properly instruct the jury on the subjects of entrapment, accomplice, and the duty of each individual juror.

A. The informer, Mattis, testified concerning conversations with Gus with reference to expenses, inventories, purchases, and how the net income might be reduced. Mattis testified he prepared the returns for the Papadakis family for all of the years involved and through 1952, and that when he filed the returns he knew they were false. That he had been communicating with the Government agents since 1949; that he had written a letter to the Government and expected to be reimbursed under the rule providing for 10% of any recovery effected by the Government. We contend that it was a form of entrapment, and the Court erred in failing to instruct the jury upon the subject of entrapment, notwithstanding our request so to do and proffered instructions upon the subject.

By reason of the facts in this case, the jury might well have believed that Gus Papadakis was being entrapped. This was brought to the Court's attention upon more than one occasion [Rep. Tr. pp. 1074, 1075], as follows:

“Mr. Parsons: In view of the fact that in the interest of brevity we on behalf of C. N. Papadakis, we have been adopting the instructions given by him and I join in the same objections just made to the Government's instructions offered and given by the court, offered to the court and given by the court and I join in the objections to the omissions of instructions provided by Nick Papadakis which by understanding were adopted by C. N. Papadakis.

And in addition thereto may I also point out that the defendant, C. N. Papadakis, offered to the court certain objections specifically relating to his own account. However, they are in part applicable to the other defendant. That is particularly instruction 14, the group of instructions requested by the defendant C. N. Papadakis on file herein.

Then instruction 15, instruction 16, instruction 17, instruction 19. It will be borne in mind that those instructions particularly related to the informer, Leonard Mattis, and while I realize the court does not agree with me, it is still our contention and we assert that he was an informer and it was a form of entrapment and the evidence in our humble opinion clearly establishes it and the case now goes to the jury without one word of explanation as to how such a defense should be considered or how the evidence of the informer, Leonard Mattis, should be considered except as to the broad general instructions as to the credibility of witnesses.

And I also adopt the argument heretofore made. I think we discussed this quite fully in chambers with your Honor and with considerable latitude and liberty and I adopt those arguments.

The Court: All right.

Mr. Parsons: Thank you."

and by proffered instructions, as follows [Clk. Tr. pp. 56, 57]:

“DEFENDANT C. N. PAPADAKIS’ REQUESTED INSTRUCTION No. ....

You are instructed that the first duty of officers of the law is to prevent, not to punish crime. It is not their duty to incite to and create crime for the sole purpose of prosecuting and punishing it. Therefore, when the criminal design originates, not with the accused, but is conceived in the minds of the Government or persons working in conjunction with Government officers and the accused is by persuasion, deceitful representation or inducement lured into the commission of a criminal act, the Government is estopped by sound public policy from prosecution therefor, and, therefore, if you find from the evidence in this case that the accused in this case were entrapped, you must acquit the accused.

Butts v. United States, 273 Fed. 35, 38;  
Newman v. United States, 299 Fed. 128, 131.”

The next requested instruction [Clk. Tr. p. 57] is as follows:

“DEFENDANT C. N. PAPADAKIS’ REQUESTED INSTRUCTION No. ....

In arriving at your verdict, you have a duty to take into consideration the motives and the statements of the prosecution’s witnesses, which include the officers and anyone working in conjunction with the officers.”

The next proffered instruction [Clk. Tr. p. 57] is as follows:

“DEFENDANT C. N. PAPADAKIS’ REQUESTED INSTRUCTION No. .....

If you believe that the defendants were entrapped by persons or a person working in conjunction with agents of the Government, it is immaterial if they thus committed some offense. If you believe the defendants were entrapped, it is your duty to acquit them.”

The next proffered instruction [Clk. Tr. p. 58] is as follows:

“DEFENDANT C. N. PAPADAKIS’ REQUESTED INSTRUCTION No. .....

You are instructed that if the accused in this case were entrapped through the efforts or design of Leonard Mattis, then you must acquit the accused.”

These instructions were all refused by the Court, and the only instruction given by the Court on the interest of witnesses or how to judge the testimony of witnesses, was the general instruction upon the credibility of witnesses [Rep. Tr. p. 1066], as follows:

“You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies; by the character of his testimony or by evidence affecting his character for truth, honesty and integrity or his motives or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence of any witness, or you may

disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men and women. You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relations which he bears to the Government or the defendant, the manner in which he might be affected by the verdict and the extent to which he is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury should distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony."

B. The informer, Mattis, testified that he had worked with Gus Papadakis and his father, Nick; that from time to time when income tax returns were prepared, Gus brought work sheets to him; that they discussed the matter; they discussed expenditures, purchases, how they might decrease purchases and increase expenses; how they might charge certain items as expense which might otherwise have been classed as capital investments, all looking toward the reduction of the income tax to the Government. That after obtaining this information he prepared the returns, that some of the returns which he prepared and filed he knew to be false when he filed them. It is our contention he was an accomplice without question of doubt, and no instruction was given by the Court upon the subject of accomplice. The only instruction given was the general instruction relating to the credibility of witnesses.

C. We next respectfully direct the Court's attention to the instruction given by the Court with reference to how the testimony of the defendants should be considered. This is especially important in view of the failure of the Court to properly instruct as to entrapment and accomplice.

D. The Court failed to instruct the jury properly upon the duty of each individual juror to render his or her individual opinion. All that was said upon this subject was that the jurors were instructed to discuss the case and that jurors were expected to reach verdicts, if possible, but that each juror if he had an opinion, after discussing it with his fellow jurors, if he felt that he should change, he should change his opinion. We assert the law was not properly stated to the jury.

### **Summary of the Argument.**

1. It was and is our contention that all of the testimony relating to the net worth and expenditure method adopted by the Government as against Nick Papadakis was hearsay in so far as Gus Papadakis was concerned. The evidence showed acquisition by Nick Papadakis, the father, of properties over a long period of years, much of which was done prior to the majority of Gus, and some before his birth, and considerable while he was away in the service, matters with which Gus had no connection. Conversations between Nick Papadakis and the agents and opinion evidence by the agents as to the net worth of Nick were all admitted, and went in as against Gus. It was hearsay. Some particularly vicious testimony was admitted concerning conversations between the revenue agents and Nick, the father, and Ernest, his brother, in the absence of Gus, concerning the LaSalle

Hotel and concerning entries in books. In these conversations the agents accused Nick and Ernest of altering the books. This information was all considered by the agents in making up the net worth and expenditure statements and it all went in as against Gus and was highly prejudicial.

2. We contend that the evidence was insufficient as against Gus. Most of it as to counts 1 to 8, which involved Nick Papadakis and Gus, was hearsay. The only support in connection with any of it was found in the statements of Mattis, the informant, and who was an accomplice and the agent of the Government in what, we contend, was a campaign of entrapment. Gus was in the service from 1941 to 1945, and for two years was overseas. He did not and could not have taken part in any of the activities during those years concerning which the agents testified, and which testimony went into the making up of their net worth and expenditure statement by which they computed unreported income and unpaid taxes as against Nick. Gus returned home in 1946, and after that entered into the operation of one of the liquor stores with his brother. There is no evidence that he himself had any income, that he altered any books or records, or that he himself gained anything, or that he entered into any plan or scheme with his father. His only assets were a home valued at \$12,900.00 which he purchased by means of a Veterans' loan from the State of California and a \$5,300.00 gift from his father. He owned a 1949 automobile which he paid for by payments,

and household furniture. All of the records in connection with the liquor stores were kept in ordinary form in small ledgers, deposits were made in the bank of their business, and expenditures made by check, except small items under \$50.00. Invoices of all purchases were kept and were available for the agents to examine. We contend the evidence was insufficient as to him.

3(a) Mattis was an informer and notwithstanding he worked on the income tax returns of the Papadakis family from 1947 through 1952, for which he was paid, he addressed a letter to the Government in 1948, and in 1949 turned over to Government agent Vitello numerous papers and documents which he had used in the preparation of returns which he himself said were false. He continued to work with the Papadakis family for almost four years after he had first written the Government and for three years after he had been discussing the matter with Government agents and turning over papers to them. His conduct indicates that there was a plan of entrapment laid out and which he executed. The Court utterly failed to properly instruct the jury on the law of entrapment, notwithstanding our request to do so, amplified by proffered instructions on the law of entrapment. The only instruction the Court gave was on the general subject of the weight and credibility of witnesses.

(b) Mattis having himself testified that he prepared the returns, that all of the work sheets were in his handwriting, that he worked out the figures himself and then

reduced it to returns which were signed by the taxpayer, and in some instances actually filed by Mattis. He testified that he knew some of the returns were false when he filed them. The evidence conclusively proves that he was an accomplice. The jury should have been instructed upon the law of accomplice, but were not. The only instruction given that could possibly relate to the subject was the general instruction upon the credibility of witnesses.

(c) In view of the fact that the Court refused and neglected to instruct upon the subject of entrapment, utterly failed to instruct upon the law of accomplice, and then gave an instruction with reference to the defendants which pointed up to the jury that they should consider the hopes and fears of the defendants and his concern with the result of the prosecution, we think the instruction was error, to the great prejudice of the defendant and appellant, because the defendant was singled out for special consideration, whereas nothing was said about the informer and accomplice and the manner in which his testimony should be considered.

(d) We urge that in view of all that has been said in this case, the Court should have been extremely careful in instructing, especially as to the duty of jurors. The Court informed the jury that a verdict was expected, and while the Court said that if the juror had reached an opinion and after discussion with his fellow jurors, that he was wrong, then he should unhesitatingly change his opinion. Then the Court neglected to advise that we were entitled to the individual and independent opinion of each juror.

## ARGUMENT.

### I.

**It Was Error to Permit the Evidence Against Nick Papadakis on the Net Worth and Expenditure Method and Other Matters to Be Used Against C. N. or Gus Papadakis. It Was Hearsay As to Him.**

At the outset of the trial, the Government, through the prosecutor, informed the Court that the net worth and expenditure method would be used [Rep. Tr. p. 10].

Throughout the trial this was pursued by showing acquisition of real properties and assets, consisting of money, bonds and treasury notes, by the father, Nick Papadakis, over repeated objections of the appellant Gus Papadakis.

For instance, there was received in evidence the Exhibits Nos. 34, 74 and 75, to name a few, which are appended to this brief, which went to show large acquisitions of real property, large sums of cash and substantial expenditures by Nick Papadakis, without any foundation to show that Gus Papadakis had anything to do with the acquiring of these assets. In fact, much of it came while he was a youth, and some while he was actually away in the Service.

The objections appear [Rep. Tr. pp. 49 and 50]:

“Mr. Laven: At this time the Government offers 34 for identification as Exhibit 34 in evidence.

“Mr. Parsons: To which the defendant C. N. Papadakis, objects as being hearsay and no proper foundation having been laid to show that we had anything to do with the preparation or control of any of the information, books or records from which this

document was made or that it is binding upon us in any respect.

I might state that in connection with that there were numerous returns offered as to Nick and Katina Papadakis. I neglected to make the same objection as to them but they were hearsay as to this defendant and this document particularly is."

Then there was discussion at pages 50, 51 and 52 of the record, during the course of which it developed that some of this information had been accumulated during the time Gus Papadakis was in the Service, as testified by the agent himself [Rep. Tr. pp. 50-52]. It is true the Court reserved a ruling at that time, but subsequently the documents all went in evidence, and undoubtedly contributed much to the conviction of C. N. or Gus Papadakis on Counts 1 to 8, inclusive.

Let us take, for example, Government's Exhibit 75, which is attached to the brief in the appendix. When it was offered it was identified by the agent as containing items such as war bonds, treasury notes, accounts receivable, real properties owned, liabilities, etc. [Rep. Tr. p. 267]. The agent, Wilbur, discussed it with Nick Papadakis. It was offered and received over our objections [Rep. Tr. p. 270].

To further aggravate this situation, the agent was permitted to testify that on March 27, 1950, he and agent Vitello went to the LaSalle Hotel where they met Nick Papadakis and another son, Ernest Papadakis. Objection that it was hearsay was interposed by the appellant Gus Papadakis [Rep. Tr. p. 274] and promptly overruled. In the course of that discussion with Nick and Ernest Papadakis, the witness identified Exhibits 77, 77-A and 77-B. These were termed rental income summaries prepared by

the witness from the rental property income book kept by Ernest Papadakis, and which had been loaned to the agent by Ernest Papadakis for the purpose of preparing his summaries [Rep. Tr. pp. 275, 276]. The agent pointed out to Nick Papadakis that it appeared to him the book disclosed several months where no rentals had been shown, or which had been omitted. At this time they inquired of Nick Papadakis as to each discrepancy and asked him why the rental had not been shown, and the agent stated that Nick's reply was, "Generally speaking, in most cases he could not understand why no rental had been shown where my summary had indicated an omission" [Rep. Tr. p. 277]. We earnestly contend that this was highly inflammatory testimony, which could not be met by us, and which needs no citation by us to show that it was pure hearsay and prejudicial.

However, the law is plain with reference to conversations, documents and similar hearsay evidence. See *Corpus Juris Secundum*, Vol. 31, p. 919, also Cumulative Pocket Part, 1953, Vol. 31, p. 919. See also *Landstrom v. Thorpe*, 8 Cir., 189 F. 2d 46, 53; *Salem New Publishing Co. v. Caliga*, 1 Cir., 144 Fed. 965; *United States v. Hiss*, 2 Cir., 185 F. 2d 822; *Globe Indemnity Co. v. McAvoy Co.*, 41 F. 2d 122, 126.

There was next offered a document 77-B in evidence as a summary of the examination based upon the books and records showing rental income omitted from the books of Nick Papadakis. To this the defendant C. N. Papadakis objected as being hearsay, but the Court permitted the receipt of the document in evidence [Rep. Tr. pp. 285, 286]. Next there was further evidence with reference to omitted rentals, as contained in a summary marked 77

and 77-A, and a discussion was had with Nick Papadakis by the agents Wilbur and Vitello with reference to why there had been an omission of rentals. To this conversation the defendant C. N. Papadakis objected [Rep. Tr. pp. 287, 288]. The Court overruled the objection and permitted the testimony. During the course of this testimony Nick Papadakis stated that in later years the books had been kept by Ernest Papadakis, some entries had been made by himself, and some by his daughter [Rep. Tr. pp. 287, 288]. Obviously this testimony was highly inflammatory, and no foundation whatsoever to establish any connection whatever on the part of the defendant Gus. In fact, the books were kept by his brother Ernest, and his sister, as well as by his father.

The foregoing testimony was accentuated by the following testimony, which can be found on pages 291 of the Reporter's Transcript, through page 297. Summarized, the agent Wilbur was permitted to relate a conversation with Nick and Ernest Papadakis (in the absence of Gus) with reference to books at the LaSalle Hotel, and the agent stated that he informed Nick that after running tapes from the books which he had taken to his office to audit, he found differences in the book covering the same period. That he told Nick Papadakis that he could not understand why the entries in the books for 1946 and 1947 and 1948 were not the same as when he borrowed the books the first time in August. Nick then replied, "he did not understand." The agent then stated he found items which were new items, and which had "previously not appeared." The agent then pointed out these items in the books by using a blue arrow to indicate items in the books which appeared there the second time he examined

them, but were not present in the books the first time he examined them.

The following testimony is particularly aggravating, and is quoted verbatim from the record [Rep. Tr. pp. 295-297]:

“Q. All right then, what was the conversation and what did you find by going through the rental books concerning the omitted items? A. I told Mr. Nick Papadakis that it seemed very peculiar that these items had been added at the top of the page or the bottom of the page or in the middle of the page where there was a gap between two months and asked him if he had any explanation as to why these entries were in the locations they were, and his answer—his only explanation to me was that this was the book I had been handed back in August 1949 and that he simply couldn’t understand what was being talked about.

Q. Did you point out to him on the sheets that you had where there were some additions in his own handwriting? A. I, to the best of my recollection, I believe I did point out one or two items.

Q. Will you look at the photostatic copies, part of Exhibit 79, and see if you can find those sheets? A. (No answer.)

Q. May I ask you this. 79— does that include all the sheets you had at that time or just part of them? A. I don’t know without checking these in detail whether these are all the rental receipt ledger sheets in the original book.

Q. Well, let us now get to the question I asked you or we are concerned about, any additions in the handwriting of Nick Papadakis. A. Mr. Laven, without a great deal of time to go through here I

don't believe I can tell you that. Do you desire me to take the time?

Q. Not at this moment. We probably can do it at the recess. Do you recall any other conversation at that time concerning this Exhibit 79 for identification? A. Yes. I asked Mr. Nick Papadakis if this was the original set of books that had been maintained to record the rentals as they came in month by month. He replied that it was. I asked him why were all the entries in this book apparently made by the same fountain pen and he replied that it looked all right to him.

I asked him why these books had not been totaled and to the best of my recollection he said that they certainly must have been totaled at some time. And I stated to him positively that I believed that these were not the original books, but Mr. Papadakis stated that I must be mistaken because they were the books.

Q. Anything else said at that time concerning Exhibit 79 and its component parts? A. Yes. I stated to Mr. Nick Papadakis that it appeared to me that most of the entries which I had told him I believed were alterations, most of those entries were in the writing of Ernest Papadakis.

Q. What did he say about that? A. To the best of my recollection he agreed but stated that this was the original book."

The entire record is replete with the admission of evidence against Gus Papadakis with which he had no concern, and this evidence was admitted largely in connection with testimony by the Government agents relating to their conclusions as indicated by the summaries which they prepared, based upon their inquiry into the books and records and bank records, bank deposits, and numerous

other items. This, we contend, is the vice of this type of evidence, for it permits, and did in this case, the agents to give opinions and to offer in evidence written summaries which were based upon matters with which this appellant had no concern. He was in no position to resist them, no position to meet them. It was hearsay and highly prejudicial.

The law has ever been in connection with the basic principles of criminal law that the burden rests upon the Government of proving the defendant guilty. It is not for the defendant to prove his innocence, but the gradual whittling away of the rights of defendants has almost brought a reversal of the time honored principle that a defendant was presumed to be innocent until the contrary was proved beyond all reasonable doubt. One need but read the recent case of *Bell v. U. S.* (1950), (4th Cir. 185 F. 2d 302), to be convinced how the presumption of innocence has been eroded by judicial decision. It recognizes the time honored rule that the burden of proof does not shift, but at the very time this is being said, violence is being done to the rule itself. We think the recent decision of the *United States of America v. Michael Caserta*, 3rd Cir., decided November 21, 1952 (199 F. 2d 905), is in point, and shows the danger to which a defendant may be subjected by failing to recognize and apply these basic principles of criminal law, especially in tax cases, which should be no different than any other form of prosecution.

The law is plain that there must be proof of taxes due and unpaid to support a conviction, regardless of what method may be used by the Government to establish such a situation. (*United States v. Schenck* (2nd Cir.), 126

F. 2d 702; *Paschen v. United States* (7th Cir.), 70 F. 2d 491; *Rose v. United States*, 128 F. 2d 622). Therefore, before a conviction of the appellant here under the facts in this case can stand, it must appear that there were taxes due and unpaid; that he willingly aided his father in the preparation of false returns. The evidence as given by the Government agents on the net worth and expenditure method, as shown by the oral testimony and by the exhibits, utterly fails to connect the appellant C. N. Papadakis with any fraudulent transaction related to Counts 1 to 8.

C. N. or Gus Papadakis can only be convicted upon the theory that he was an abettor. We say the evidence is utterly lacking as to this, and in practically all instances the evidence offered under this theory was hearsay as to Gus Papadakis. We think the remarks of Learned Hand in *United States v. DiRe*, 2nd Cir., 159 F. 2d 818, 819, are pertinent:

“We have several times had occasion to consider what relation to a conspiracy makes a man a confederate, and what relation to the principles in a crime makes a man an abettor; and we have uniformly held that the prosecution must prove the accused to have associated himself with the principals in the sense that he has a stake in the success of the venture.”

I think we have a right to ask here, what stake did Gus Papadakis have? What did he receive in connection with Counts 1 to 8 where he is charged with having actually aided his father? The most that can be said is that from the information at hand, he assisted in the preparation of the return.

II.

**The Evidence Was Insufficient Against the Appellant  
C. N. (Gus) Papadakis.**

We have already summarized the evidence which was admitted against Gus Papadakis, including that which we contend was both hearsay and highly prejudicial, and will not here repeat it. Where is the evidence that Gus aided his father with criminal intent? The only support is to be found in the statements of Mattis, the informer and accomplice, as heretofore summarized. We contend it was not sufficient.

Gus was in the Service from 1941 to 1945, and in 1944 and 1945 was overseas [Rep. Tr. p. 587]. The rest of the time he was only in port every month or two, and was not in close touch with the business [Rep. Tr. p. 588]. Before he went in the Service, Gus worked in the liquor store [Rep. Tr. p. 589], and he had an understanding with his father that when he came back from the Service, the store would be his [Rep. Tr. p. 590]. When he returned his father was operating the store. He testified that he knew something of his father's properties before he went away, but that his father acquired some while he was in the Service. That after his return, he entered into a partnership with his brother George to operate the liquor stores [Rep. Tr. p. 592]. That they were to pay the father for the inventory. That the only property he had was the interest in the stores, his home that he bought for \$12,900.00, with the help of \$5,300.00 given to him by his father, and the aid of a Veterans' loan from the State of California. In addition he had a 1949 DeSoto automobile which he purchased on time, and household furniture. These were his assets. [Rep. Tr. pp. 597, 598].

### The Activities of Gus.

Gus kept records concerning the stores, deposited the money in the bank [Govt. Ex. 67] [Rep. Tr. pp. 599, 600]. The entries in the store books were made at the liquor stores by the clerks [Rep. Tr. p. 604], were picked up and summaries made, and the main books were kept in the central store on Pacific Street, where an office and warehouse was maintained. No records were ever destroyed or removed [Rep. Tr. p. 605]; all bills were kept to show purchases [Rep. Tr. p. 607]; that in the preparation of income tax returns, he gathered information and took it either to Hoffman or Mattis, the accountants [Rep. Tr. p. 612]; that he never told Mattis to take off \$10,000.00 or any sum from inventory or after purchases. That he knew all of the distributors from whom they purchased liquor and supplies, kept records of sale and were supervised by the Board of Equalization of the State of California [Rep. Tr. pp. 612, 613]. That he never kept any records for his father in 1946, 1947, 1948 or 1949, but that in 1950 he aided his father in the keeping of the hotel books [Rep. Tr. p. 629]; that he kept them as correctly as he could.

### Evidence Given by Martha O'Sullivan, Defendants' Accountant.

Martha O'Sullivan testified she was a certified public accountant; had practiced the profession of accounting since 1934; was a member of the American Institute of Accountants and of the California Society of Public Accountants; that she was Chairman of the Practice and Procedure Committee of the California Society of Public Accountants; that she was a member of the firm of Gabrielson, O'Sullivan & Poulson, certified public account-

ants; that they did a varied business and employed eleven accountants in addition to the three partners [Rep. Tr. pp. 915-917]; that they did work for numerous corporations and municipalities, including the County of Los Angeles, County of San Diego, and the Cities of Huntington Beach and South Gate. That her firm was employed in connection with the Papadakis matter under the direction of Attorney Murray Chotiner; that she was informed there was a fraud investigation pending, and she was instructed to make an audit of the Papadakis accounts and records, and specifically was instructed to give all benefit of doubt to the Government, and to then prepare a report to be used in connection with the possible compromise of the differences between the Government and Papadakis [Rep. Tr. pp. 918-921]. Her office then commenced an investigation, examining numerous records, and commenced the building of a general ledger, using bank accounts, which bank accounts were in the possession of the Government [Rep. Tr. pp. 924-926]. They checked their real properties, and found that all properties were traceable to bank deposits, notwithstanding agent Vitello had told her differently [Rep. Tr. pp. 926, 927]. After her investigation she prepared Government's Exhibit 34, attached to the Appendix herewith, which was an increase in net worth statement, and subsequently the tentative amended returns were prepared by her, Government's Exhibit 35.

That she attended the trial of this matter, heard the testimony, with the exception of a small part of the testimony; that she had examined the exhibits, including the original returns of Nick and Katina Papadakis for 1945 through 1949, which were marked Government Exhibits 15 to 24, inclusive. That she had also examined

the increase in net worth statement prepared by Mr. Vitello, Government's Exhibit 75, a copy of which is attached hereto in the Appendix. That she had also examined Government's Exhibit 85, which was a work sheet, where the Government had attempted to compute income from 1917 to 1944; she had also examined Government's Exhibit 88 [Rep. Tr. pp. 937, 938], Government's Exhibit 88 being entitled a "Computation of Unreported Income" for the period 1945 through 1949; also Government's Exhibit 89, being a "Net Worth Statement" for Nick and Katina Papadakis. Also she had examined Government's Exhibit 90, being a schedule of the difference between the net income reported on the original returns and the corrected net income, net worth [Rep. Tr. p. 939], and after all of this, she had prepared summaries of her analysis in the increase and net worth and taxable income and the taxes due, if any, from Nick and Katina Papadakis. That she had prepared a schedule of assets, liabilities and net worth as of December 31, 1944 to December 31, 1949, relating to Nick and Katina Papadakis. This was received in evidence, defendants' Exhibit N-D, a copy of which is attached hereto in the Appendix [Rep. Tr. pp. 941-943]. In connection with the analysis she prepared a document labeled "Analysis of Change in Net Worth" for the years of 1944 to 1949, which was received in evidence as Defendants' Exhibit N-E, a copy of which is attached hereto in the Appendix [Rep. Tr. pp. 943, 944]. Next she made a recomputation and reconciliation for the unreported income for the years

1945 to 1949, inclusive, of Nick and Katina Papadakis, which was received in evidence as Defendants' Exhibit N-F, and is attached hereto in the Appendix [Rep. Tr. pp. 944, 945]. Next she prepared a document called "Taxable Income Computation for the Years 1945 to 1949," which was a work sheet based on the records and exhibits in the case. This was received in evidence as Defendants' Exhibit N-G, a copy of which is attached hereto in the Appendix [Rep. Tr. pp. 945, 946]. Next she prepared a document called "A Summary of the Computation of Taxes" which, in her opinion, were due from Nick Papadakis based on her work sheets and her investigation. This was received in evidence as Defendants' Exhibit N-H, and is attached hereto in the Appendix [Rep. Tr. pp. 945, 946].

The witness then testified that there were changes reflected in the net worth statement, Defendants' Exhibit N-D, as compared with Government's Exhibit 75 (the document prepared by Government agent Vitello); that as between this and the original schedule of net worth, the major change was the change of \$35,100.00, relating to the acquisition of a building at 1227 South Pacific, it having been stipulated by the Government as being an error in Government's Exhibit 75 [Rep. Tr. p. 947]; that, in her opinion, that when you used the difference in net worth method of computing the taxable income, if it were left in 1945, when it was not purchased in that year, it would look like there was \$35,100 taxable income in that year, but that is not correct. The witness stated that with reference to Defendants' Exhibit N-F, which related to

a computation of unreported income for the years 1945 to 1949, and as compared with Government Exhibit 88 for 1945, they show unreported income of \$20,822.94, which is the total for Nick and Katina Papadakis, and she shows only \$2,548.34, one-half of which is for Nick Papadakis, or \$1,274.17; that, in her opinion, this distortion took place by reason of an error in Government's Exhibit 88, where, in adjusting capital loss, they actually added the capital loss back one and one-half times to income, rather than giving a deduction for half of it. The balance of the adjustment was made up by net income of C. N. and George Papadakis which was remaining in the commercial bank account, leaving unreported income of \$2,548.34, whereas the Government contended it was \$20,822.94 [Rep. Tr. pp. 952-954]. The accountant had examined the returns for 1946 and records relating thereto, but no indictment was returned as to that year. With reference to the year 1947, the Government claimed an unreported income for Nick and Katina Papadakis of \$42,949.12, and she adjusted the same by showing that the net income of Ernest Papadakis remained in the commercial bank account, but after their analysis the unreported income was only \$10,734.21, as compared with \$42,949.12 [Rep. Tr. pp. 956, 957]. That the Government claimed \$42,395.28 for the year 1948 as unreported income, whereas after her analysis it was \$7,844.70 as the half for Nick Papadakis. There was an increase from their previous statement of \$7,000.00 because of a loan in 1948 which had originally been shown in 1949. That

was added back, but after taking into account the money of Ernest Papadakis in the account, money applied on the indebtedness due from the boys from their purchase of the stores, and after adjusting this, you have unreported income of \$15,689.39 for Nick and Katina Papadakis. For the year 1949, instead of \$34,440.29 which the Government claims as unreported income, she showed an over-statement of income by Nick Papadakis of \$71.51. They reduced the Government's computation of unreported income by the net income of Ernest Papadakis, and also \$7,150.00 which was an amount paid by the liquor stores and used as a deposit on a building which Nick Papadakis credited against the \$25,000.00 the boys owed him [Rep. Tr. pp. 957, 958]. They also reduced it by the payment of the bank loan of \$7,100.00, which went direct into the building. After this reconciliation and adjustment, there was an over-reporting of income of \$143.02. The Exhibit N-F, the witness testified, she computed to be the taxable income chargeable, giving no benefit of doubt of doubtful items. The witness was then asked concerning taxes paid, estimates of what were due as computed by the Government and herself, and also the charge as shown in the Indictment. For instance, in 1947, on the original return Nick Papadakis paid \$876.40. The Indictment charged he should have paid \$9,375.98, the Government witnesses said it was \$10,086.42, the witness O'Sullivan said it should have been \$2,664.99. For 1948, Nick Papadakis paid \$1,041.00; the Government charged in the Indictment \$11,817.94; on the tentative return she reduced it to

\$3,796.46. In 1949, Nick Papadakis paid \$1,820.45; the Indictment charged \$2,750.96; in court the Government witnesses contended he owed \$9,226.99; the witness' tentative return showed \$2,731.58. The witness stated that, in her opinion, in view of all the facts in this case, the minimum is closer to what would be the true status of the case [Rep. Tr. pp. 963-965].

In the light of all of this, we earnestly contend that the evidence, insofar as Gus Papadakis is concerned, is woefully lacking, and the convictions should not be sustained.

May we respectfully call this Court's attention to the fact that the trial court himself expressed doubt as to the evidence in support of some of the counts, in the following language [Rep. Tr. p. 1036]:

“The Court: Well, the evidence as to some of the counts seems to me to be rather weak. There may be enough to take it to the jury. I will deny the motion.”

It is especially important in view of the fact that Gus Papadakis is charged jointly with Nick Papadakis in Counts 1 to 8, inclusive, to note that Gus Papadakis could only have been convicted upon the theory that he was an aider and abettor. There must be some evidence to show that he promoted the venture himself, either made it his own, or had an interest in the outcome. (*United States v. Falcone*, 311 U. S. 204, 209, 109 F. 2d 579; also *Morie v. United States*, 127 F. 2d 827; also *Yenkichi Ito v. United States* (C. C. A. 9), 64 F. 2d 73, 75.)

III.

**The Court Erred in Failing to Properly Instruct the Jury on the Subject of Entrapment, Accomplice, and the Duty of Each Individual Juror.**

(A) The informer, Mattis, testified concerning conversations with Gus Papadakis and revenue agents, as stated in our summary of the evidence, to which we respectfully direct the Court's attention. Briefly, he had numerous discussions with Gus respecting inventory, purchases, etc., to the general effect that net income be reduced [Rep. Tr. pp. 138, 141, 143, 144, 147, 148, 153, 154, 159, 160, 161, 163, 173, 179].

Mattis testified he had prepared the returns for the Papadakis family for all of the years involved, and even through 1952, for which work he was paid by the Papadakis family a reasonable fee [Rep. Tr. pp. 344-346]; that he had consulted Government agents and had written a letter in 1948, and knew he might be paid on any recovery effected by the Government [Rep. Tr. pp. 210, 211]; that in 1949 he turned over his work sheets to agent Vitello [Rep. Tr. p. 346]; that he prepared and filed returns for Papadakis that he knew to be false [Rep. Tr. pp. 185, 186].

By reason of the facts in this case, the jury might well have believed that Gus Papadakis was being entrapped. This was brought to the Court's attention upon more than one occasion [Rep. Tr. pp. 1074, 1075], and by proffered instructions, as follows [Clk. Tr. pp. 56, 57]:

“DEFENDANT C. N. PAPADAKIS’ REQUESTED INSTRUCTION No. .....

You are instructed that the first duty of officers of the law is to prevent, not to punish crime. It is not their duty to incite to and create crime for the sole purpose of prosecuting and punishing it. Therefore, when the criminal design originates, not with the accused, but is conceived in the minds of the Government or persons working in conjunction with Government officers and the accused is, by persuasion, deceitful representation or inducement lured into the commission of a criminal act, the Government is estopped by sound public policy from prosecution therefor, and, therefore, if you find from the evidence in this case that the accused in this case were entrapped, you must acquit the accused.

*Butts v. United States*, 273 Fed. 35, 38;  
*Newman v. United States*, 299 Fed. 128, 131.”

The next requested instruction [Clk. Tr. p. 57] is as follows:

“In arriving at your verdict, you have a duty to take into consideration the motives and statements of the prosecution’s witnesses, which include the officers and anyone working in conjunction with the officers.”

The next proffered instruction [Clk. Tr. p. 57] is as follows:

“If you believe that the defendants were entrapped by persons or a person working in conjunction with agents of the Government, it is immaterial if they thus committed some offense. If you believe the defendants were entrapped, it is your duty to acquit them.”

The next proffered instruction [Clk. Tr. p. 58] is as follows:

“You are instructed that if the accused in this case were entrapped through the efforts or design of Leonard Mattis, then you must acquit the accused.”

These instructions were all refused by the Court, and the only instruction given by the Court on the interest of witnesses or how to judge the testimony of witnesses, was the general instruction upon the credibility of witnesses [Rep. Tr. p. 1066], as follows:

“You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies, by the character of his testimony or by evidence affecting his character for truth, honesty and integrity or his motives or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence of any witness, or you may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men and women. You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relations which he bears to Government or the defendant, the manner in which he might be affected by the verdict and the extent to which he is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon the credibility. If a witness is shown knowingly to have testified falsely on the

trial touching any material matter, the jury should distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness's testimony."

(B) Next we respectfully direct the Court's attention to this fact, which we think is all important. The Court failed to instruct upon the law of entrapment, and we contend that the facts were such as related even by Mattis, the Government agents, and Gus Papadakis, that this should have gone to the jury with proper instructions, but the failure so to do is aggravated by this situation, and that is that Mattis himself testified, as heretofore pointed out, concerning conversations with Gus Papadakis in which Mattis claims that Gus told him he wanted to make certain changes in inventory, purchases, expenses, etc., in order to reduce the income tax, and that he, Mattis, knowingly filed false returns. The evidence further showed that these returns were all prepared by Mattis, and all of his notes in his own handwriting were offered in evidence. This case went to the jury with absolutely no instruction on the subject of accomplice. Surely, Mattis was an accomplice, and the usual instruction that his testimony "should have been viewed with caution" should have been given. It was the Court's duty so to do, but the only instruction given was the instruction on the credibility of witnesses just hereinabove set forth in subparagraph (A).

(C) We next respectfully direct the Court's attention to the instruction given by the Court with reference to how the testimony of the defendants should be considered.

This is especially important in view of the failure of the Court to properly instruct as to entrapment and accomplice. The instruction is as follows [Rep. Tr. p. 1067] :

“The defendants have offered themselves as witnesses and have testified in the case. Having done so, you are to estimate and determine their credibility in the same way as you would consider the testimony of any other witness. It is proper to consider all of the matters that have been suggested to you in that connection, including the interest that the defendants may have in the case, their hopes and their fears, and what they have to gain or lose as a result of your verdict. You are not limited in your consideration of the evidence to the bald expressions of the witnesses, you are authorized to draw such inferences from the facts and circumstances which you find may have been proved as seem justified in the light of your experience as reasonable men and women.”

This instruction is particularly vicious, as it points up that special consideration should be given to the interest, the hopes and fears of the defendants. The rule is, as we understand it, that the testimony of all witnesses should be measured by the same rule. There is no different rule which applies to a defendant. Here we were confronted with an informer, an accomplice. No instructions were given as to him, and in this instance the Court points out that they might pay particular attention to the hopes and fears of the defendants. This was highly prejudicial, we earnestly contend.

(D) We next point out the instruction given by the Court [Rep. Tr. p. 1068], and particularly a portion of the instruction, as follows:

“Jurors are expected to agree upon a verdict where they can conscientiously do so, you are expected to consult with one another in the jury room and any juror should not hesitate to abandon his own view when convinced it is erroneous.”

This is the only instruction which even remotely suggests to the jury that the defendants and the Government alike were entitled to the individual opinion of each juror. It was woefully lacking in those elements which point out to the juror that he might render his individual opinion, which we understand to be the law. We proffered an appropriate instruction upon the subject which is as follows [Clk. Tr. p. 49]:

“You are instructed that the defendant is entitled to the individual and independent verdict of each and every member of the jury, and the evidence should be such, in order to warrant a conviction, that he is guilty of the crime charged beyond a reasonable doubt, and unless the evidence does so establish such fact in the mind of each and every juror, then such juror should vote to acquit the defendant.”

#### **The Law Applicable.**

With reference to entrapment, the authority upon the subject is *Sorrells v. United States*, 287 U. S. 435, 77 L. Ed. 413; *Butts v. United States*, 273 Fed. 35, 38; *Newman v. United States*, 299 Fed. 128, 131.

We respectfully direct the Court's attention to the recent case of this Court, tried before the same District Judge who tried this case, namely, *Lufty v. United States*,

198 F. 2d 760, where the conviction was reversed upon the ground of entrapment.

We are not mindful of the fact that it has been said that merely because officers and agents of the Government afford opportunities for the commission of the offense does not make it entrapment, the deceit must originate with the official or agent; however, there were two sets of facts in this case, and it was for the jury to determine the same under proper instructions from the Court.

With reference to accomplice, we are aware of the fact that the Court has wide discretion, and although the testimony of an accomplice will support a conviction. (*Caminetti v. United States*, 242 U. S. 470, 495, 61 L. Ed. 442). we do not believe it to be the law that a conviction may stand where the evidence plainly showed that the witness is an accomplice and the Court has failed to instruct. Fairly recent cases on accomplice: *Stillman v. United States*, 177 F. 2d 607, 616. In the *Stillman* case just cited, the Court gave a proper instruction to the effect that the testimony of the witnesses should be given "close scrutiny and treated with caution." See also *Brickey v. United States*, 123 F. 2d 341, 345.

### Conclusion.

The District Court erred in the particulars that we have pointed out, and for the reasons set forth, we respectfully pray that the judgment and order denying the motion for new trial be reversed and set aside, to the end that justice may be done.

Respectfully submitted,

RUSSELL E. PARSONS,

Attorney for Appellant C. N. (Gus) Papadakis.



## **APPENDIX**

**(Exhibits)**



NICK AND CATINA (KATINA; CATENA) PAPADAKIS

**STATEMENT OF ASSETS AND LIABILITIES**  
**December 31, 1941 to 1949 Inclusive**

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## ASSETS

<u>ASSETS</u>	December 31, 1941	December 31, 1942	December 31, 1943	December 31, 1944	December 31, 1945	December 31, 1946	December 31, 1947	December 31, 1948	December 31, 1949
Cash in Bank - Savings Account	\$ 5,643.33	\$ 5,384.79	\$ 26,825.70	\$ 14,459.23	\$ 575.75	\$ 20,631.25	\$ 6,120.34	\$ 786.77	\$ 794.65
Cash in Bank - Commercial Account	2,359.18	7,558.64	9,718.96	20,260.81	17,015.70	14,907.77	3,807.12	5,238.63	3,213.04
United States War Bonds		150.00	3,150.00	14,400.00	58.25	58.25			
United States Treasury Notes and Series "G" Bonds					14,500.00	14,500.00	64,500.00	64,500.00	64,500.00
Receivable from Sons and Others			750.00			26,050.00	17,550.00	12,150.00	5,000.00
Trust Deeds Receivable - Bardsen and Knudsen		6,356.37							
- Borger and Borreson	2,811.13	1,817.37							
- Harry and Helen Hirsch									
- Robert Ivon				2,200.00					
							14,949.99		

## LAND AND BUILDINGS

		LAND AND BUILDINGS															
Date Acquired	Description	1916	Building	536-540 12th Street	9,500.00	9,500.00	9,500.00	9,500.00	9,500.00	9,500.00	9,500.00	9,500.00	9,500.00	9,500.00	9,500.00	9,500.00	
1922	Home	1922	1405 S. Meyeler Street	23,500.00	23,500.00	23,500.00	23,500.00	23,500.00	23,500.00	23,500.00	23,500.00	23,500.00	23,500.00	23,500.00	23,500.00	23,500.00	
1923	La Salle Hotel	255 W. 7th Street	61,000.00	61,000.00	61,000.00	61,000.00	61,000.00	61,000.00	61,000.00	61,000.00	61,000.00	61,000.00	61,000.00	61,000.00	61,000.00	61,000.00	
1931	Garage	273 W. 7th Street	11,000.00														
1932	Frame	1022 14th Street	3,000.00	3,000.00	3,000.00												
1932	Frame	1325-31 - 13th Street	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	
1934	Frame	1557 W. 7th Street	3,500.00	3,500.00													
1935	Frame	1561 W. 7th Street	3,500.00	3,500.00													
1935	Lot and Cabin	Lake Arrowhead	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	
1938	Mission Hotel	255 W. 7th Street	28,200.00	28,200.00	28,200.00	28,200.00	28,200.00	28,200.00	28,200.00	28,200.00	28,200.00	28,200.00	28,200.00	28,200.00	28,200.00	28,200.00	
1939	Store	2200-2204 S. Pacific Blvd.	16,500.00	16,500.00	16,500.00	16,500.00	16,500.00	16,500.00	16,500.00	16,500.00	16,500.00	16,500.00	16,500.00	16,500.00	16,500.00	16,500.00	
1943	Frame	477-485 W. 22nd Street			17,272.41	17,272.41	17,272.41	17,272.41	17,272.41	17,272.41	17,272.41	17,272.41	17,272.41	17,272.41	17,272.41	17,272.41	
1943	Brick	331-335 W. 6th Street			22,000.00	22,000.00	22,000.00	22,000.00	22,000.00	22,000.00	22,000.00	22,000.00	22,000.00	22,000.00	22,000.00	22,000.00	
1944	Apartment	536-542 W. 23rd Street						14,000.00	14,000.00	14,000.00	14,000.00	14,000.00	14,000.00	14,000.00	14,000.00	14,000.00	
1944	Store	381-385 W. 6th Street						30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	
1944	Store	1221-1227 S. Pacific Blvd.						35,100.00	35,100.00	35,100.00	35,100.00	35,100.00	35,100.00	35,100.00	35,100.00	35,100.00	
1945	Store	258-276 W. 6th Street							68,250.00	68,250.00	68,250.00	68,250.00	68,250.00	68,250.00	68,250.00	68,250.00	
1947-8	Store	1039 Wilmington-San Pedro Road											8,500.00	30,936.58	34,193.85		
1948	Building	301-303 W. 6th Street												39,965.00	39,965.00		
1949	Building	19th and Santa Fe													16,600.64		
1949	Building	1908 Santa Fe													17,118.76		
Various	Automobiles		1,100.00	1,100.00	1,100.00	2,139.77	2,139.77	2,139.77	2,139.77	2,139.77	2,139.77	2,139.77	2,139.77	2,139.77	2,139.77	2,139.77	
Various	Furniture for Hotel			6,000.00	6,000.00	6,000.00	6,000.00	6,000.00	6,000.00	6,000.00	6,000.00	6,000.00	6,000.00	6,000.00	6,000.00	6,000.00	6,000.00
Liquor	Inventory at 2200 S. Pacific		2,969.72	2,915.80	3,896.09	6,692.72	7,268.34										9,135.11
Liquor	Inventory at 267 W. 7th Street		4,103.50	4,573.55	3,491.72	5,562.41	5,662.31										
Total Assets			\$189,886.86	\$195,756.52	\$249,304.88	\$337,787.35	\$380,242.53	\$411,309.45	\$452,604.46	\$490,753.99	\$521,698.06						



NICK AND CATINA (KATINA: CATENA) PAPADAKIS

**ANALYSIS OF CHANGES IN NET WORTH**  
**Years 1942 to 1949 Inclusive**

**NET WORTH AT BEGINNING OF YEAR**

**INCOME DURING YEAR:**

Net Income from Hotel and Rental Properties  
Interest Income  
Gain or Loss on Sale of Property  
Unaccounted for Increase in Cash

### Total Income

### Less Deductions

Net Income Before Federal Income Tax  
Less Federal Income Tax Paid

2014-03-01 10:24:00 77.2

Net Income After Federal Income Tax  
Less Personal Living Expenses, Gifts, Etc.

#### Increase in Net Worth During Year

**NET WORTH AT END OF YEAR**

**RECONCILIATION TO AMENDED TAX RETURNS:**

### Net Income Per Tax Returns:

**Nick Papadakis**

**Catina Papadakis**

Total

Add: 1/2 of Long Term Capital Gain  
Depreciation, Not Deducted Above,  
Deducted on Return

Less: Prior Depreciation on Assets Sold  
1/2 of Long Term Capital Loss  
Unaccounted for Decrease in Cash

Not Deducted on Return, Deducted Above  
Accounted for Expenses in Excess of  
Checks Drawn, Not Deducted on Returns,  
Deducted Above

**Net Income Before Federal Income Tax  
As Above**

1942	1943	1944	1945	1946	1947	1948	1949
\$166,048.69	\$185,870.73	\$230,254.23	\$294,623.44	\$320,317.10	\$362,256.21	\$375,335.65	\$382,724.56
\$ 11,177.74	\$ 26,526.95	\$ 45,166.60	\$ 39,683.89	\$ 56,943.57	\$ 20,361.25	\$ 23,364.74	\$ 25,041.92
55.04	212.00	133.53	79.60	40.50	972.19	1,731.44	1,620.38
3,550.00	500.00		1,513.08				
17,185.72	31,625.91	43,566.18	5,227.13	4,836.17	4,854.33	9,148.68	1,333.22
\$ 24,868.50	\$ 57,864.86	\$ 88,866.31	\$ 43,477.54	\$ 61,820.24	\$ 26,187.77	\$ 34,244.86	\$ 25,329.01
1,330.54	2,675.80	1,000.00	1,000.00	1,699.44	1,000.00	1,000.00	1,067.50
\$ 23,537.96	\$ 55,189.06	\$ 87,866.31	\$ 42,477.54	\$ 60,120.80	\$ 25,187.77	\$ 33,244.86	\$ 24,261.58
115.92	3,151.56	9,100.68	13,183.88	10,912.00	8,506.98	4,247.20	2,000.00
\$ 23,422.04	\$ 52,037.50	\$ 78,765.63	\$ 29,293.66	\$ 49,208.80	\$ 16,680.79	\$ 28,997.66	\$ 22,260.76
3,600.00	7,654.00	14,396.42	3,600.00	7,269.69	3,601.35	21,608.75	4,750.00
\$ 19,822.04	\$ 44,383.50	\$ 64,369.21	\$ 25,693.66	\$ 41,939.11	\$ 13,079.44	\$ 7,388.91	\$ 17,510.78
\$185,870.73	\$230,254.23	\$294,623.44	\$320,317.10	\$362,256.21	\$375,335.65	\$382,724.56	\$400,235.32

\$ 10,673.98	\$ 26,054.53	\$ 41,758.16	\$ 18,516.54	\$ 26,742.40	\$ 10,934.89	\$ 14,763.60	\$ 12,481.00
<u>10,673.98</u>	<u>26,054.53</u>	<u>41,758.15</u>	<u>18,516.54</u>	<u>26,742.40</u>	<u>10,934.88</u>	<u>14,763.60</u>	<u>12,481.00</u>
<b>\$ 21,347.96</b>	<b>\$ 52,109.06</b>	<b>\$ 83,516.31</b>	<b>\$ 37,033.08</b>	<b>\$ 53,484.80</b>	<b>\$ 21,869.77</b>	<b>\$ 29,527.20</b>	<b>\$ 24,962.00</b>
							290.00

<u>3,390.00</u>	<u>3,870.00</u>	<u>4,350.00</u>	<u>6,201.00</u>	<u>6,636.00</u>	<u>3,318.00</u>	<u>3,717.66</u>	<u>4,231.5</u>
\$ 24,737.96	\$ 56,269.06	\$ 87,866.31	\$ 43,234.08	\$ 60,120.80	\$ 25,187.77	\$ 33,244.86	\$ 29,193.6
1,200.00	1,080.00						

756.54

756.54

② \$ 23,537.96 \$ 55,189.06 \$ 87,866.31 \$ 42,477.54 \$ 60,120.80 \$ 25,197.77 \$ 33,244.86 24,361.50







Nick and Catena Papadakis  
 and Anchor Liquors - Currency Deposit Excerpts

<u>Year</u>	<u>Total Deposits</u>	<u>Currency</u>	<u>Coin</u>	<u>Checks</u>	<u>Number of Checks</u>	<u>Remarks</u>
<u>Savings Account #20590 @ Sec. 1st Bk. - San Pedro</u>						
1942	\$ 55.04	- 0 -	- 0 -	\$ 55.04	2	- 0 -
1943	\$ 52,504.91	2,142.00	132.00	\$ 50,230.91	60	Largest currency dep., \$847.00
1944	30,133.53	- 0 -	- 0 -	30,133.53	5	- 0 -
1945	36,066.52	- 0 -	- 0 -	36,066.52	5	- 0 -
1946	20,055.50	- 0 -	- 0 -	20,055.50	29	- 0 -
1947	25,098.56	7,500.00	- 0 -	17,598.56	7	(6-2-47 \$2,500. (6-9 5,000.)
1948	15,666.43	- 0 -	- 0 -	15,666.43	4	- 0 -
1949	<u>7.88</u>	<u>- 0 -</u>	<u>- 0 -</u>	<u>7.88</u>	<u>2</u>	<u>- 0 -</u>
<b>Totals</b>	<b>\$179,588.37</b>	<b>\$9,642.00</b>	<b>\$132.00</b>	<b>\$169,814.37</b>	<b>114</b>	

Nick Papadakis' Commercial Accounts @ Sec. 1st Bk. - San Pedro

1942	\$102,430.31	\$50,136.00	\$1,068.66	\$ 51,225.65	1,556
1943	187,380.19	89,471.00	64.84	97,844.35	2,129
1944	242,722.45	112,474.00	110.47	130,137.98	2,487
1945	245,530.15	71,936.00	111.60	173,482.55	2,467
1946 #1	25,147.53	9,371.00	- 0 -	16,076.53	334
1946 #2	46,065.33	14,416.00	- 0 -	31,649.33	578
1946 #3	49,356.68	8,512.00	•77	40,843.91	411
1947	99,746.03	26,020.00	- 0 -	73,726.03	594
1948	<u>126,333.32</u>	<u>21,580.00</u>	<u>3.30</u>	<u>104,750.09</u>	<u>1,014</u>
<b>Totals</b>	<b>\$1,125,012.06</b>	<b>\$403,916.00</b>	<b>\$1,359.64</b>	<b>\$719,736.42</b>	<b>11,573</b>

Nick Papadakis' Commercial Accounts - Currency Deposits

<u>Year</u>	<u>Number Deposits of \$1,000.00 or More</u>	<u>Largest Deposit</u>
1942	7	\$1,500.00
1943	38	2,373.00
1944	40	2,200.00
1945	16	2,103.00
1946	9	1,800.00
1947	4	3,450.00
1948	2	1,365.00



Anchor Liquors - Commercial Account @ Sec. 1st Bk. - San Pedro

<u>Year</u>	<u>Large Currency Deposits</u>
	<u>Number Deposits of \$1,000.00 or More</u>
1946	14
1947	30
1948	47

Anchor Liquors Account appears to reflect the normal activities of the liquor business.

Case No. 22-730 in People vs. DePietro  
Exhibit 74  
Date JUL 25 1952 No. 74 IDENTIFICATION  
Date JUL 25 1952 No. 74 IN EVIDENCE  
Clerk U.S. District Court, Sou. Dist. of Calif.  
John J. DePietro Deputy Clerk



75  
 Nick and Catina (Katina: Catena) Papadakis  
 Schedule of Assets and Liabilities  
 (Exclusive of Cash on Hand)

<u>ASSETS:</u>		<u>12-31-41</u>	<u>12-31-42</u>	<u>12-31-43</u>	<u>12-31-44</u>	<u>12-31-45</u>	<u>12-31-46</u>	<u>12-31-47</u>	<u>12-31-48</u>
Cash in Banks-Savings Accounts		\$ 5,643.33	\$ 5,384.79	\$26,825.70	\$14,459.23	\$ 575.75	\$20,631.25	\$ 6,120.34	\$ 786.77
Cash in Banks-Commercial Accounts		2,359.18	7,558.64	9,718.98	20,260.81	17,015.70	14,907.77	3,807.12	5,238.63
United States War Bonds		-0-	150.00	3,150.00	14,400.00	58.25	58.25	-0-	-0-
United States Treasury Notes		-0-	-0-	-0-	-0-	14,500.00	14,500.00	64,500.00	64,500.00
Receivable from Sons, C. N. & George		-0-	-0-	-0-	-0-	-0-	4,000.00	4,000.00	4,000.00
Trust Deeds Receivable:									
Bardsen & Knutson		-0-	6,356.37	-0-	-0-	-0-	-0-	-0-	-0-
Borger & Naome Borreson		2,811.13	1,817.37	-0-	-0-	-0-	-0-	-0-	-0-
Harry & Helen Hirsch		-0-	-0-	-0-	-0-	-0-	-0-	14,949.99	-0-
Robert Ivon		-0-	-0-	2,200.00	-0-	-0-	-0-	-0-	-0-
<u>Lands and Buildings:</u>									
<u>Date Acquired</u>	<u>Description</u>	<u>Address</u>							
1916	Building	536-540 12th Street, San P.	9,500.00	9,500.00	9,500.00	9,500.00	-0-	-0-	-0-
1922	Home	1405 S. Meyeler "	" "	23,500.00	23,500.00	23,500.00	23,500.00	23,500.00	23,500.00
1923	Brick Building "La Salle Hotel"	255 W. 7th Street,	" "	61,000.00	61,000.00	61,000.00	61,000.00	61,000.00	61,000.00
1931	Garage	273 West 7th "	" "	11,000.00	-0-	-0-	-0-	-0-	-0-
1932	Frame Building	1022 14th "	" "	3,000.00	3,000.00	3,000.00	-0-	-0-	-0-
1932	" "	1325-31 13th "	" "	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00
1934	" "	1557 West 7th "	" "	3,500.00	3,500.00	-0-	-0-	-0-	-0-
1935	" "	1561 " 7th "	" "	3,500.00	3,500.00	-0-	-0-	-0-	-0-
1935	Lot & Cabin Brick Building	Lake Arrowhead, California*	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00	1,200.00
1938	"Mission Hotel"	255 West 7th Street, San P.	28,200.00	28,200.00	28,200.00	28,200.00	28,200.00	28,200.00	28,200.00
1943	Frame Building	477-485 W. 22d Street, "	"	-0-	-0-	16,850.00	16,850.00	16,850.00	16,850.00
1943	Brick Building	331-335 W. 6th "	" "	-0-	-0-	22,000.00	22,000.00	22,000.00	22,000.00
1944	Apartment	536-542 W. 23d "	" "	-0-	-0-	-0-	14,000.00	14,000.00	14,000.00

Case No. 22-230-er  
 Plaintiff vs. Katina Papadakis  
 Exhibit 75  
 Date JUL 25 1952 No. 75 Identification  
 Date JUL 25 1952 No. 72 In Evidence  
 Clerk U. S. District Court Sou. Dist. of Calif.  
 Deputy Clerk  
*[Handwritten signatures and initials over the bottom right corner]*



NICK AND CATINA (KATINA) PAPADAKIS  
SCHEDULE OF ASSETS, LIABILITIES, AND NET WORTH  
December 31, 1944 to December 31, 1949

Case No. 100-1552-Sub-1  
Date May 1, 1949  
Date May 1, 1949  
Clerk U.S. District Court, Sou. Dist. of Calif.  
Identification No. 100-1552-Sub-1  
Evidence  
Death Clerk

ASSETS	December 31		December 31		December 31	
	1944	1945	1946	1947	1948	1949
Cash in Bank - Savings Account	\$ 14,459.23	\$ 575.75	\$ 20,631.25	\$ 6,120.34	\$ 786.77	\$ 794.65
Cash in Bank - Commercial Account	20,260.81	17,015.70	14,907.77	3,807.12	5,238.63	3,213.04
United States War Bonds	14,400.00	58.25	58.25			
United States Treasury Notes	14,500.00	14,500.00	64,500.00	64,500.00	64,500.00	64,500.00
Receivable from Sons - C.N. and George		(26,050.00)	(17,550.00)	(12,150.00)	(5,000.00)	
Trust Deed Receivable - Harry and Helen Hirsch			14,349.99			

LAND AND BUILDINGS

Date Acquired	Description	1944	1945	1946	1947	1948	1949
1916 Building	536-540 12th Street	9,500.00		23,500.00	23,500.00	23,500.00	23,500.00
1922 Home	1405 S. Meyler Street	23,500.00		61,000.00	61,000.00	61,000.00	61,000.00
1923 La Salle Hotel	255 W. 7th Street	61,000.00		7,500.00	7,500.00	7,500.00	7,500.00
1932 Frame	1325-31 13th Street	7,500.00		1,200.00	1,200.00	1,200.00	1,200.00
1935 Lot & Cabin	Lake Arrowhead			28,200.00	28,200.00	28,200.00	28,200.00
1938 Mission Hotel	255 W. 7th Street	28,200.00		17,272.41	17,272.41	17,272.41	17,272.41
1943 Frame	477-485 W. 22nd Street	17,272.41		22,000.00	22,000.00	22,000.00	22,000.00
1943 Brick	331-335 W. 6th Street	22,000.00		14,000.00	14,000.00	14,000.00	14,000.00
1944 Apartment	536-542 W. 23rd Street	14,000.00		30,000.00	30,000.00	30,000.00	30,000.00
1944 Store	381-385 W. 6th Street	30,000.00		35,100.00	35,100.00	35,100.00	35,100.00
1944 Store	1221-1227 S. Pacific	35,100.00		68,250.00	68,250.00	68,250.00	68,250.00
1945 Store	258-276 W. 6th Street			4,500.00	32,723.99	35,981.26	
1947-8 Store	1039 Wilmington-San Pedro Road				40,500.00	40,500.00	
1948 Building	301-303 W. 6th Street						
1949 Building	19th and Santa Fe				(7,000.00)	16,600.64	
1949 Building	1908 Santa Fe						
Automobiles		2,139.77	2,139.77	4,154.60	4,154.60	4,154.60	
Furniture for Hotel		6,000.00	6,000.00	6,000.00	6,000.00	6,000.00	
Liquor Inventory at 2200 S. Pacific		6,692.72	7,268.34				
Liquor Inventory at 267 W. 7th Street		5,562.41	5,662.31				
Total Assets		\$318,787.35	\$361,242.53	\$392,309.45	\$429,604.46	\$481,076.40	\$505,020.47
<u>LIABILITIES</u>							
Real Estate Loan		\$ 13,000.00	\$ 12,750.00				
Bank Loans						\$ 14,000.00	
Due to C.N. and George Papadakis	(30,163.91)	(46,925.43)	(49,053.24)	(49,053.24)	(49,053.24)	(49,053.24)	(49,053.24)
Due to Ernest Papadakis							
Total Liabilities	\$ 43,163.91	\$ 59,675.43	\$ 49,953.24	\$ 72,768.15	\$ 114,549.07	\$ 120,982.38	
NET WORTH	\$ 275,623.44	\$ 301,567.10	\$ 343,256.21	\$ 356,836.31	\$ 366,527.33	\$ 381,038.09	

NOTE: Brackets indicate figures different from Government Exhibit "89"



NICK AND CATINA [KATINA] PAPADAKIS  
 ANALYSIS OF CHANGES IN NET WORTH  
 YEARS 1944 - 1949

7/29/55

N E

	1945	1946	1947	1948	1949
Net worth - beginning of year	27562344	30156710	34325621	35683631	36652733
Net income from Hotel & Rental Properties	3968389	5596357	2036125	5336474	2504192
Interest income	7960	4050	97219	173144	162038
Gain or loss on sale of capital assets	151308				
Unaccounted for increase in cash	490305	497960	435366	916899	133322
<i>Total.</i>	4315346	6098367	2568710	3426517	2532908
Less Deductions	100000	169944	1000.00	100000	106750
<i>Net Taxable Income</i>	4215346	5928423	2468710	3326517	2496158
Less Federal income tax paid	1260980	1399512	750700	196540	200082
Less Personal living Expenses, Gifts, Etc	2954366	4528911	1718010	3129977	2226076
	360000	360000	360000	2160875	475000
<i>Increase in Net Worth</i>	2594966	4168911	1358010	969102	1751076
Net worth - end of year	30156710	34325621	35683631	36652733	38403809



NF

NICK AND CATINA [KATINA] PAPADAKIS  
RECOMPUTATION AND RECONCILIATION OF "UNREPORTED INCOME"  
YEARS 1945 TO 1949 INCLUSIVE

Case No. \_\_\_\_\_

vs. \_\_\_\_\_

EXHIBIT

Date, AUG 1 - 1952 No. \_\_\_\_\_ IDENTIFICATION  
Date, AUG 1 - 1952 No. \_\_\_\_\_ IN EVIDENCE  
Clerk, U. S. District Court, Sou. Dist. of Calif.

Deputy Clerk

"Unreported Income per Government Exhibit "88"

1945 1946 1947 1948 1949

2082294 344654 4294912 4239528 3444029

Add: Amount of Receivable from C.N. and George Nat  
shown on Exhibit "88" [Exhibit "88" Shows Only  
\$4000.00 Each Year]

2205000

Construction In Progress at 1945 and Santa Fe  
Not shown on Exhibit "88"

700000

TOTAL ADDITIONS

2205000 700000

TOTAL

2082294 1860346 4294912 4939528 3444029

Deduct:

Error on Exhibit "88" showing Addition of Capital Loss  
Additional Gifts shown on Exhibit "88".

151308

Net Income of C.N. & George Papadakis Remaining in Commercial  
Bank Account

52497

Net Income of Ernest Papadakis Remaining in Commercial Bank Account  
Collection of Account Receivable Considered as Income on Exhibit "88"  
Payment of Bank Loan Considered as Income on  
Exhibit "88"

2371491 2778092 2043331  
850000 540000 715000

TOTAL DEDUCTIONS

1827460 212781 3221491 3370589 3458331

"Unreported Income" as Adjusted

254834 1647565 1073421 1568939 [143027]

PROOF:

Net Income for Maximum Tax Computation [Before  
Deduction for Dependents and Personal Exemption]

3670900 5264823 3136910 2954751 2003004

Reported Adjusted Gross Income

3416066 3617258 1063489 1385812 2017306

"Unreported Income"

254834 1647565 1073421 1568939 [143027]

One-Half Applicable to Nick Papadakis

127417 823783 536711 784470 [7151]

NOTE: Brackets indicate income over-reported on original return.

Prepared by  
Martha O'Sullivan, C.P.A. of the firm  
Gabrielson, O'Sullivan, Poulson & Co,  
Certified Public Accountants, Los  
Angeles, to supplement oral testimony.



NICK AND CATINA [KATINA] PAPADAKIS  
 TAXABLE INCOME COMPUTATIONS  
 YEARS 1945 TO 1949 INCLUSIVE

7/29/52

N.G.

	1945	1946	1947	1948	1949
Net Worth - End of Year	30156710	34325621	35683631	36652733	38403809
Less: Net Worth - Beginning of Year	27562344	30156710	34325621	35683631	36652733
Increase in Net Worth	2594366	4168911	1358010	969102	1751076
Add: Living Expenses and Gifts	360000	360000	360000	2160875	1115000
Federal Income Tax Paid	1260980	1399512	750700	196540	500000
	4215346	5928423	2468710	3326517	243652
Less: Depreciation	620100	663600	331800	371766	42356
Add: One half of capital loss	3595246	5264823	2136910	2954751	211311
Net Income Before Exemptions	75654				
Less Personal Exemptions and Exemptions for Dependents	3670900	5264823	2136910	2954751	211311
Net Income For Maximum Tax Computation	100000	100000	100000	40000	111311
	3570900	5164823	2036910	2714751	173311



NICK PAPADAKIS  
Summary of VARIOUS TAX COMPUTATIONS

7/30/52

YEAR	ORIGINAL RETURN ASSESSED AND PAID	TAX SHOWN ON INDICTMENT	GOVERNMENT'S REVISED TAX	TAX ON TENTATIVE AMENDED RETURNS	RECOMPUTED TAX		AVERAGE PROBABLE LIABILITY BETWEEN THE TWO
					MINIMUM	MAXIMUM	
1945	572256	2309650	1135586	674927	538149	666289	602219
1946	545598	No INDICTMENT [INCOME OVERREPORTED PER GOVERNMENT FIGURES]		10345.78	2809.19	10104.42	6456.82
1947	87640	937598	1008642	266499	75053	257462	166258
1948	100041	1181794	966400	379646	176546	356751	266649
1949	182045	275096	922699	273158	148945	194866	171956

Case No. \_\_\_\_\_  
vs. \_\_\_\_\_  
Date AUG 1 1952 EXHIBIT  
Date AUG 1 1952 No. IDENTIFICATION  
Date AUG 1 1952 No. IN EVIDENCE  
Court, Sou. Dist. of Cal. Deputy City

Prepared by  
Martha O'Sullivan, C.P.A. of the firm  
Gabrielson, O'Sullivan, Poulsen & Co,  
Certified Public Accountants, Los  
Angeles, to supplement oral testimony





